VIA ELECTRONIC FILING

William T. Lake Chief, Media Bureau Federal Communications Commission 445 12th Street, S.W. Washington, DC 20554

Re: Request for Clarification Regarding Implementation of the Benchmark Condition MB Docket No. 10-56

Dear Mr. Lake:

The undersigned content interests and their affiliates (collectively, the "Content Interests") are submitting this letter to express their objection and significant concerns with respect to the above-referenced request (the "Request") submitted by Comcast Corporation and NBCUniversal Media LLC (collectively, the "Transaction Parties"). The Request, if granted, would mandate the disclosure to a direct competitor of highly confidential and extremely sensitive competitive information belonging to a Content Interest, and potentially abrogate confidentiality provisions in bilateral commercial agreements with relevant online distribution partners.

The Content Interests and their affiliates, which are expressly referenced by the Benchmark Condition and therefore are directly affected by the Request, ² did not receive notice or a copy of the Request at the time it was filed. The Content Interests have since learned of the Request and are analyzing its potential legal, business, and practical ramifications. To the extent that an immediate response is required pursuant to Section 1.45(b) of the Commission's rules, we are submitting this letter to express each of our initial concerns and will submit more detailed comments if the Bureau finds it necessary.³

¹ See Request for Clarification Regarding Implementation of the Benchmark Condition, MB Docket No. 10-56 (submitted Feb. 17, 2012).

² See In re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc., for Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011) (the "Order"). The Order imposed multiple conditions on the Transaction Parties, including the "Benchmark Condition" that was the focus of the Request. See Order at Appendix A. The Benchmark Condition implicates the business deals of several defined classes of "peer" entities, including "Broadcast Network," "Cable Programmer," "Film Studio," and "Production Studio," whose definitions directly name the Content Interests and their affiliates.

³ Should the staff determine that an extension of time to more completely respond to the Request is needed, it is hereby respectfully requested so that the Bureau may conduct a review of the Request based on a full and complete understanding of the issues and concerns of parties that would be affected by the Request. We note that the Request was filed on February 17, 2012, the Friday before the President's Day holiday weekend, and press reports alerting the Content Interests to the filing did not emerge until several days thereafter. Given these facts, and the short time

William T. Lake, Chief MB Docket No. 10-56 February 27, 2012 Page 2

In addition to the serious concerns we share regarding the disclosure of highly confidential competitive information and the potential abrogation of bilateral commercial agreements, we are concerned that the Request is overbroad and will harm competition in the evolving video marketplace generally. Expansive disclosure of the type anticipated in the Request would have a chilling effect on future online distribution deals, and skew the competitive landscape by allowing one entity to possess detailed nonpublic information about its competitors' business dealings – which would appear to be counter to relevant competition laws. The Request also raises other serious legal and competitive issues as the Content Interests were not parties to the transaction, nor seek to avail themselves of the Benchmark Condition. Further, the Request and proposed protective order greatly exceed the scope of the Benchmark Condition, as reflected by the far more tailored protective order adopted for arbitration cases under the same provision. 5

The Content Interests therefore oppose the above-referenced Request and urge the Commission to reject it.

Respectfully submitted,

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frame afforded for oppositions under Section 1.45(b), an extension of time to respond in a more detailed manner would be in the public interest.

⁴ For example, there are significant questions about the Commission's authority to compel production of, and potentially abrogate the confidentiality provisions contained in, agreements involving entities with no connection to a transaction subject to FCC review or conditions. The Request does not cite any authority in this regard.

⁵ See Order at Appendix E (prohibiting disclosure of Protected Third Party Agreements or any other Confidential Information or Highly Confidential information to any in-house personnel of the parties to the arbitration, including the Transaction Parties). In contrast, the Request and draft protective order would allow disclosure to in-house counsel and a potentially unlimited number of business persons.

William T. Lake, Chief MB Docket No. 10-56 February 27, 2012 Page 3

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